

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

ETHAN JEROME MOORE,

Petitioner/Movant,

v.

CIVIL ACTION NO. 3:03-2503
(Criminal No. 3:99-00090)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER


Pending before the court is the petitioner's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence [Docket 87]. This action was referred to the Honorable Maurice G. Taylor, Jr., United States Magistrate Judge, for submission to this court of proposed findings and recommendations. The Magistrate Judge has submitted findings of fact and recommended that the court deny the petitioner's § 2255 motion. The petitioner has filed objections to the Magistrate Judge's findings.

Specifically, the Magistrate Judge recommends that the court deny the motion because Mr. Moore already filed a § 2255 motion on December 19, 2000. The court denied the first motion on April 24, 2002, and the Fourth Circuit Court of Appeals then denied the appeal as untimely. *United States v. Moore*, No. 04-6043, 2004 U.S. App. LEXIS 5201 (Mar. 19, 2004). The Antiterrorism and Effective Death Penalty Act of 1996 requires a petitioner to obtain authorization from the appropriate court of appeals prior to filing a successive § 2255 motion. 28 U.S.C. § 2244(b)(3)(A) (2000). Without this pre-filing authorization, the district court cannot consider a successive motion.

Because Mr. Moore failed to obtain this pre-filing authorization, the court **DENIES** his motion without prejudice.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 18, 2006


A handwritten signature in black ink, reading "Joseph R. Goodwin", is written over a horizontal line. Below the line, the name and title are printed in a serif font.

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE